IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.22 OF 2005
IN
ARBITRATION PETITION NO.231 OF 2004

1. M/s.A.C. Goel Distributing Co.
   Sole Proprietorship of Mr.Om
   Prakash Goel, having its office
   at 3980, Chawri Bazar,
   Delhi - 110 006.

2. Mr.O.P. Goel,
   Indian Inhabitant having its
   office at 3980, Chawri Bazar,
   Delhi- 110 006. ....Appellants

V/s.

M/s.Balkrishna Industries Ltd.
a Company registered under the
Companies Act, 1856 having its
registered at 105, Creative
Industrial Estate, 72,
N.M. Joshi Marg, Mumbai - 400 013. ....Respondent

Mr.Shiv Korana i/b A.K. Goel for the Appellants.

Mr.Ashok Agarwal i/b Mustafa Motiwala for the Respondent.

CORAM : A.P. SHAH AND
S.J. VAZIFDAR, JJ.
DATED : 31ST JANUARY, 2005.

P.C. :

1. By consent the Appeal is taken up for final

hearing.

2. This is an Appeal against the order of the learned single Judge dismissing the Appellants' Petition under Section 34 of the Arbitration and Conciliation Act, 1996 for setting aside the award of the sole Arbitrator.

3. On 9th April, 2001 the Respondent had filed Summary Suit No.1431 of 2001 in this Court to recover a sum of Rs.76,17,350/- and interest. On 22nd October, 2001, the suit was decreed ex-parte. The Appellants took out a Notice of Motion for setting aside the decree and for staying the execution thereof. By an order dated 29th August, 2002, the Notice of Motion was allowed conditional upon the Appellants depositing a sum of Rs.40,00,000/- within six weeks. Being aggrieved by the order, the Appellants filed Appeal being No.891 of 2002. By an order dated 24th February, 2003, the Appeal was disposed of in terms of the minutes of the consent order in the suit between the parties herein. The claim, disputes and differences in the suit were referred to the sole Arbitration of Mr.V.A.Mohta, the Hon'ble Chief Justice of the Orissa High Court (Retd.). Clause 2 of the minutes of the consent order

gave the learned Arbitrator summary power to decide the matter.

4. The Respondent's claim was allowed by the learned Arbitrator in the sum of Rs.84,016/- in respect of the first claim and Rs.68,02,498/- in respect of the second claim. The first claim was under the consignee agreement. The second claim was in respect of the unpaid price of goods sold.

5. The learned single Judge dismissed the Petition on the ground that the award turned on an appreciation of the evidence on record and that the learned Arbitrator had given detailed reasons in support of his award. We are in respectful agreement with the learned Judge.

6. Mr.Korana, the learned counsel appearing on behalf of the Appellants contended that the reasons in the award constituted mere conjuncture on the part of the learned Arbitrator and the award was therefore liable to be set-aside. He drew our attention to the following extract from the award in support of his submission :

"Both parties are businessman and

> maintain account books during the regular course of their business. It is unthinkable that for years together there would not be tallying and or settlement of accounts. This would be particularly so when one is an Income Tax acesses. Exhibit C-3 dated 9.12.1999 admittedly bears the signature of Respondent No.2 Mr.Om Prakash Goel."

7. The submission is not well founded. Firstly the above extract comprises only three sentences from the entire award and indeed from paragraph 6.1 of the award itself. The learned Arbitrator has considered the submission further. The Appellants' contention before him was that as per the said document, a sum of Rs.2,97,366/- is shown as due after adjusting several entries recorded therein. The Appellants' contention was that the document was merely a statement of account submitted to the Respondent by the Appellants only for the purpose of the Respondent later verifying the same. This submission did not find favour with the learned Arbitrator for various reasons. For instance, he held that there was no record to indicate that the Respondent entered into any correspondence raising any objection to the said document. The learned Arbitrator has observed that if the accounts were really not settled as contended by the Appellants it would be wholly unnatural for them not to raise a protest and to show differences appearing in their

accounts. The learned Arbitrator further considered the fact that long thereafter the Respondent had even made part payment. The learned Arbitrator rejected the Appellants' case that the part payment was only to help the Respondent in their hour of need.

8. It is clear from the award therefore that the learned Arbitrator has come to the conclusion upon an appreciation of evidence on record. The conclusion was not based on mere conjuncture. The conclusion was not only a possible one but one which in fact commends itself to us. We are unable to state that the learned Arbitrator has given no cogent reasons for his finding.

9. It was also submitted that the reasons furnished by the learned Arbitrator were not adequate to come to that conclusion. Firstly we are unable to agree that the reasons furnished by the learned Arbitrator are not adequate. Reading the award as a whole we find that the reasons given by the learned Arbitrator are comprehensive and adequate. We have been through the entire award. The learned Arbitrator has in detail set out the agreement and understanding between the parties in respect of the transactions. He has considered all the relevant facts and documents

including the invoices, correspondence between the parties and has ruled on the rival contentions.

. Further as held by the Supreme Court reasonableness of the reasons given by the Arbitrator cannot be challenged.

10. In the circumstances, the Appeal is dismissed.